IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6752 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI 2 RAHUL LABHUBHAI GOHEL, THROUGH STEP BROTHER

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6752 of 2005

MR AR SHAIKH for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1-2

GOVERNMENT PLEADER for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 09/05/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the detenu through his stepbrother Ranchhodbhai Nathabhai Rathod challenging his detention in pursuance of the order passed against him by District Magistrate, Bhavnagar, on

03rd of March, 2005, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (PASA Act for short). The detenu is under detention as dangerous person from 3rd of March, 2005 in pursuance of the above order.

2. The grounds of detention as placed on record, reveal that the detaining authority took into consideration 8 crimes registered against the detenu for the offences punishable under Sections 457 and 380 of the Indian Penal Code and secondly the Detaining Authority also took into consideration four in-camera statements of the witnesses, as recorded by the Sponsoring Authority on 1st of February, 2005 and verified by the Detaining Authority on 1st of March, 2005. The identity of the witnesses is not disclosed by the Detaining Authority, claiming privilege under Section 9(2) of the PASA Act.

3. Out of eight crimes registered against the detenu, the crime shown at serial no.1 was registered before B-Division Police Station, Bhavnagar on 17th September, 2004. It was alleged that the detenu was involved in theft of one crown of silver and other ornaments of silvers used for the idol of a temple. The second crime was registered before A-Division Police Station, Bhavnagar, on 28th December, 2004 and it was alleged that the detenu was involved in the theft of crown and other ornaments used for the idol of a temple. The crimes shown at Serial Nos.3, 4, 5, 6 and 7 came to be registered against the detenu before Vartej Police Station on 31st December, 2004, 31st of December, 2004, 31st December, 2004, 1st January, 2005 and 1st January, 2005. In each of these five cases it was alleged that the detenu was involved in theft of ornaments of idol of a temple. The 8th Case was registered before C-division Police Station, Bhavnagar on 1st of January, 2005 wherein also it was alleged that the detenu was involved in the theft of crown of idol used in temple. The Detaining Authority thoroughly and exhaustively examined the investigation papers in all the eight cases and came to the conclusion that the detenu was a habitual offender committing offence of theft.

4. The Detaining Authority also took into consideration four in-camera statements of the witnesses. Out of four in-camera statements first witness referred to an incident occurred before 42 to 45 days of recording of his statement. When witness was present at his place of business the detenu approached him and attempted to sale some ornaments. The witness stated that the witness would purchase ornaments with bills only. Thereupon the

detenu insisted the witness like anything so the witness requested the detenu to go away from his shop otherwise he would be constrained to call the police. Thereupon the detenu got excited and started giving abuses to the witness. A crowd was gathered but the detenu took out a knife and ran after the crown and the crowd was dispersed. The detenu attempted to inflict a knife blow on the witness but the witness got into his shop. The detenu thereafter threatened the witness to kill and went away. The second witness referred to an incident occurred before one and half months of the recording of his statement. While witness was going to have Darshan at the temple of Shitla Mata, he noticed suspicious activities of the detenu. Thereupon the witness asked the detenu that why the detenu had been to temple. Thereupon the detenu got excited and gave three slaps to the witness. The crowd was gathered but the detenu took out a weapon i.e. Gupti and ran after the crowd so the crowd was dispersed. The detenu being headstrong person the witness did not prefer any complaint against him. The third witness referred to an incident occurred before 2 months of referring of his statement. While witness was passing through Bharatnagar Cross-Road, he noticed that a crowd was gathered and detenu and one of his accomplice were beating one person who was shouting for help. The crowd which was gathered requested the detenu not to beat the said person. Thereupon detenu and his accomplices got excited and after taking out knife ran towards the crowd so people started running helter and skelter. They got the witness and the witness was beaten up and was told to give the detenu everything which the witness had. Thereafter, the detenu took out Rs.400/from the witness and let him go after threatening that if the witness dare to intervene again, he would be done to death. The fourth witness referred to an incident occurred before two and half months of recording of his statement. At that relevant point of time, the witness was coming from Village Shidakh to Bhavnagar on his own vehicle. On the way, he was stopped by the detenu who had one bag with him. The detenu requested the witness to give him a lift on his vehicle upto Bhavnagar. The witness knew the activities of the detenu so he refused to give lift to the detenu. Thereupon, the detenu got excited and started abusing and beating the witness. A crowd of vehicles passing on the road was gathered but the detenu took out knife and ran towards the crowd so people started running heter and skelter. Thereafter, the detenu administered three to four slaps to the witness and threatened that if the witness refused again to the detenu, he would be done to death. On account of fear of the detenu the witness did not lodge any

complaint against the detenu.

5. Relying upon the above material, the Detaining Authority came to the conclusion that the detenu was engaged in anti-social and illegal activities of committing thefts and harassing innocent citizens. In view of Detaining Authority, the detenu was a dangerous person within the meaning of PASA Act. The Detaining Authority also concluded that the detenu was headstrong, ferocious and of violent temperament and was in habit of administering threats to the innocent citizens and to beat them. The Detaining Authority came to the conclusion that the dangerous illegal activities of the detenu were prejudicial to the maintenance of the public order and were required to be prevented forthwith. After considering the remedies available against the detenu under the general law, the Detaining Authority reached to the subjective satisfaction that there was no other alternative remedy except to detain the detenu under the PASA Act. The Detaining Authority therefore passed the order of detention of the detenu, as aforesaid, which is under challenge in this petition.

6. The learned Advocate Ms.Dutta for the detenu and learned AGP Ms.Punani for the respondents were heard at length. The affidavit-in-reply has filed by the Detaining Authority and placed on record is also taken into consideration.

7. Out of various grounds urged on behalf of the detenu and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the detenu, the public order was disturbed.

8. To reach to the subjective satisfaction that the dangerous activities of the detenu were prejudicial to the maintenance of public order, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

9. Referring to the eight criminal cases filed against the detenu under the Indian Penal Code for committing theft and going through the investigation papers as placed on record, it is found that those eight cases came to be filed against the detenu because he was found during investigation to have committed offences of theft. The act which is alleged in the criminal cases is offence under the Penal Statute of the country. However, merely filing cases under the Penal statute of the country, would not result in a conclusion that the activities of the detenu were disturbing the public order. At the most, the detenu might have committed breach of the provisions of law, for which the detenu may be tried and punished if found guilty, but surely the act constituting the offence cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or community or particular community was involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order.

10. Further while referring to the in-camera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the detenu, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the detenu and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through in-camera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, even from the bare reading of them, are not capable of disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order.

11. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393. The Division Bench of this

Court after considering many decisions of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

12. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the detenu cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set

aside on this ground alone.

13. In the result, the petition is allowed. The order passed by District Magistrate, Bhavnagar on 03rd of March, 2005, against the detenu in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenue - Rajubhai @ Rahul Labhubhai Gohel is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. Direct Service is permitted.

(J.R. Vora, J.)

09.05.2005

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